

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:

New Prime, Inc.
3720 West 800 South
Salt Lake City, Utah

Respondent.

Docket No. RCRA-08-2020-0007

**COMPLAINANT’S REPLY TO RESPONSE TO MOTION TO CORRECT
COMPLAINANT’S PREHEARING EXCHANGE**

The undersigned counsel for the United States Environmental Protection Agency (EPA), Director of the Enforcement and Compliance Assurance Division Region 8 (Complainant), pursuant to 40 C.F.R. § 22.16(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Rules), hereby replies to “Respondent’s Response to Motion to Amend Complainant’s Prehearing Exchange” (Response). On February 22, 2021, Complainant filed “Complainant’s Motion to Amend Complainant’s Prehearing Exchange” (Motion) to correct mistakes made during the final editing of CX04 EPA’s *Explanation of the Proposed Penalty Assessment in the Matter of New Prime, Inc.* (12/16/2020) (EPA’s Proposed Penalty Assessment); and to update the information in CX64.

Section 22.19(f) of Rules requires a party to “promptly supplement or correct [its prehearing] exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated” 40 C.F.R. § 22.19(f). A motion to supplement a

prehearing exchange should be granted unless there is evidence of bad faith, delay tactics, or undue prejudice. *In the Matter of: Service Oil, Inc.*, 2006 WL 3406349 at *3 (EPA ALJ, April 12, 2006).

CX04 and CX04Cor: EPA's Proposed Penalty Assessment

Complainant submitted a redlined and corrected version of CX04, identified as CX04Cor., in an effort to promptly correct errors in the EPA's Proposed Penalty Assessment. Respondent does not oppose the motion to correct CX04, however, Respondent requests that the original CX04 remain in Complainant's Prehearing Exchange. Response at 2. Complainant originally sought to replace CX04 with CX04Cor to avoid confusion, however, Complainant agrees to include both CX04 and CX04Cor in Complainant's Prehearing Exchange and submits the proposed revised "Corrected Table of Complainant's Prehearing Exchange Exhibits" as Attachment 5.

CX64 and CX64Cor: Curriculum Vitae for John J. Reschl (John Reschl's CV).

Complainant also seeks to file an updated version of John Reschl's CV, identified as CX64Cor.

The Presiding Officer issued its Prehearing Order on November 2, 2020 (Prehearing Order). Among other things, the Prehearing Order set a schedule for the parties to complete their "Prehearing Exchange" and directs the parties to submit the exhibits each party may produce at hearing, and the list of witnesses each intends to call, with a "brief narrative summary of their expected testimony." Prehearing Order at 2; *see also* 40 C.F.R. 22.19(a)(2)(i). As required by the Prehearing Order, Complainant filed Complainant's Prehearing Exchange on December 18, 2020; Respondent filed Respondent's Prehearing Exchange on January 8, 2021; and Complainant filed Complainant's Rebuttal Prehearing Exchange on January 22, 2021. Upon

receipt of Respondent's Prehearing Exchange, Complainant worked diligently to identify the most qualified and appropriate witnesses to rebut assertions made in Respondent's Prehearing Exchange. Because Mr. Reschl works full-time as a chemist at the National Enforcement Investigation Center he was not able to thoroughly review and update his CV within the 14 calendar days (including a federal holiday) allotted for rebuttal. Shortly after Complainant's Rebuttal Prehearing Exchange was filed, Mr. Reschl had the opportunity to review his stock CV in light of his anticipated testimony at hearing. As soon as EPA realized his CV did not fully address his relevant experience, Mr. Reschl updated his CV and EPA promptly filed the updated CX64Cor as part of the Motion. EPA is not seeking to change or expand the scope of Mr. Reschl's testimony as described in Complainant's Rebuttal Prehearing Exchange, but is instead seeking to update John Reschl's CV as expected by 40 C.F.R. 19(f).

Respondent will have the opportunity to cross-examine Mr. Reschl during any hearing. Complainant filed this Motion promptly; the hearing has not been scheduled; and there is no evidence of bad faith, delay tactics or undue prejudice. For these reasons, Complainant requests that the Presiding Officer grant Complainant's Motion to Correct Complainant's Prehearing Exchange with CX04Cor (Motion, Attachment 2) and CX64Cor (Motion, Attachment 3); and accept the Corrected Table of Complainant's Prehearing Exchange Exhibits filed herein (Attachment 5).

Dated: March 18, 2021

Respectfully Submitted,

Laurianne Jackson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region 8

CERTIFICATE OF SERVICE

The undersigned certifies that on March 18, 2021, I filed electronically the foregoing **COMPLAINANT’S REPLY TO RESPONSE TO MOTION TO CORRECT COMPLAINANT’S PREHEARING EXCHANGE** with the Clerk of the Office of Administrative Law Judges using the OALJ E-Filing System and sent by electronic mail to Mark Ryan, attorney for Respondent, at mr@ryankuehler.com and Scott McKay, attorney for Respondent, at smckay@nbmlaw.com.

Date

By: /s/ Kate Tribbett

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